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REC'D

DEC 18 2009

King County Prosecutor
Appellate Unit

NO. 63094-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

CALVIN WILLIAMS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Chris Washington, Judge

BRIEF OF APPELLANT

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COURT OF APPEALS
DIVISION ONE
WASHINGTON
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A. ASSIGNMENT OF ERROR

The sentencing court erred in imposing as a condition of sentence that appellant have no contact with minors for a period of five years. CP 34 (section 4.6).

Issue Pertaining to Assignment of Error

When appellant's crime did not involve a minor, must the sentence condition restricting his contact with minors be stricken?

B. STATEMENT OF THE CASE

The State charged appellant Calvin Williams with failure to register as a sex offender. CP 1-3; RCW 9A.44.130(11)(a). The State alleged that between November 5, 2007 and December 11, 2007, Williams failed to report weekly to the King County Sheriff's office as required as a result of his prior conviction for a sex offense and his homeless status. CP 1-3.

A jury trial was held January 27-29, 2009, before the Honorable Chris Washington. 1RP-3RP.¹ The jury convicted Williams as charged. CP 12.

On February 27, 2009, Williams was sentenced. 4RP. The court imposed a high-end standard range sentence of 57 months, to be served

concurrently to a 250-month sentence previously imposed in another matter. CP 30, 32-33; 4RP 9. In preparing the judgment and sentence the prosecutor notified the court that he had included a provision under "Paragraph 4.6 for no contact. I have put in there for a maximum term of five years have no contact with any minors." 4RP 17-18. With no objection from Williams' counsel, the court concluded the prohibition on contact with minors was a "[l]egitimate sanction." 4RP 18.

Williams appeals.

C. ARGUMENT

THE SENTENCE CONDITION PROHIBITING WILLIAMS FROM HAVING CONTACT WITH MINORS IS UNLAWFUL AND THEREFORE SHOULD BE STRICKEN.

A court may impose only a sentence that is authorized by statute. State v. Barnett, 139 Wn.2d 462, 464, 987 P.2d 626 (1999). The applicable sentencing statutes are those that were in effect at the time the offense was committed. RCW 9.94A.345. Illegal or erroneous sentences may be challenged for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008).

Williams' failure to register offense was committed between November 5, 2007 and December 11, 2007. CP 1-3. At that time, the

¹ There is one volume of verbatim report of proceedings that is paginated separately for each of four dates (three for trial, one for sentencing). The different dates are referenced

sentencing statutes provided; "[A]s a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter." Former RCW 9.94A.505(8).²

"Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

Former RCW 9.94A.030(13) (identical to current RCW 9.94A.030(10)).

In the right circumstances, a no contact order can constitute a "crime-related prohibition" authorized under former RCW 9.94A.505(8). State v. Armendariz, 160 Wn.2d 106, 111-18, 156 P.3d 201 (2007).

Williams' commission of the offense of failing to register did not involve a minor. Rather, it involved only Williams' failure to contact the King County Sheriff as required by the registration statute, RCW 9A.44.130. CP 1-3; See CP 23 (elements listed in the to-convict instruction (Instruction 8) include only a duty to register, the failure to register, and that the failure occurring in the State of Washington). Nonetheless, the trial court included as a condition of Williams' sentence a prohibition against contact with minors for a period of five years. CP 34

as follows: 1RP - 1/27/09; 2RP - 1/28/09; 3RP - 1/29/09; and 4RP - 2/27/09 (sentencing).

² A copy of applicable version of former RCW 9.94A.505 is attached as an appendix.

(section 4.6 of the judgment and sentence). Because Williams' offense did not involve a minor, this prohibition should be stricken. State v. Riles, 135 Wn.2d 326, 352, 957 P.2d 655 (1998).

Riles is on point. In Riles, defendant Gholston was convicted of raping a 19-year-old woman. Id. at 336. The court imposed a condition prohibiting "contact with . . . any minor- age children without the approval of your [CCO] and mental health treatment counselor." Id. at 337. Striking this condition, the Court held the statutory authority for courts to order no contact with a specified class of individuals did not justify a no-contact order against minors when the victim was an adult. Id. at 352-53.

Here, Williams was convicted of failing to register as a sex offender. Because there is no reasonable relationship between this offense and the sentence provision prohibiting contact with minors, that prohibition should be stricken. Riles, 135 Wn.2d at 353.

Former RCW 9.94A.505 [subsequently amended by 2009 c 389 § 1, eff. Aug. 1, 2009; 2009 c 28 § 6, eff. Aug. 1, 2009; 2008 c 231 § 25, eff. Aug. 1, 2009]

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, the court shall impose a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

(iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

(iv) RCW 9.94A.545, relating to community custody for offenders whose term of confinement is one year or less;

(v) RCW 9.94A.570, relating to persistent offenders;

(vi) RCW 9.94A.540, relating to mandatory minimum terms;

(vii) RCW 9.94A.650, relating to the first-time offender waiver;

(viii) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(ix) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(x) RCW 9.94A.712, relating to certain sex offenses;

(xi) RCW 9.94A.535, relating to exceptional sentences;

(xii) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(xiii) Section 4 of this act, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; until July 1, 2000, a term of community supervision not to exceed one year and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds reasons

justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

(9) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

(10) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(11) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, community placement, or community custody, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

CREDIT(S)

[2006 c 73 § 6, eff. July 1, 2007; 2002 c 290 § 17; 2002 c 289 § 6; 2002 c 175 § 6; 2001 2nd sp.s. c 12 § 312; 2001 c 10 § 2. Prior: 2000 c 226 § 2; 2000 c 43 § 1; 2000 c 28 § 5; prior: 1999 c 324 § 2; 1999 c 197 § 4; 1999 c 196 § 5; 1999 c 147 § 3; 1998 c 260 § 3; prior: 1997 c 340 § 2; 1997 c 338 § 4; 1997 c 144 § 2; 1997 c 121 § 2; 1997 c 69 § 1; prior: 1996 c 275 § 2; 1996 c 215 § 5; 1996 c 199 § 1; 1996 c 93 § 1; 1995 c 108 § 3; prior: 1994 c 1 § 2 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 31 § 3; prior: 1992 c 145 § 7; 1992 c 75 § 2; 1992 c 45 § 5; prior: 1991 c 221 § 2; 1991 c 181 § 3; 1991 c 104 § 3; 1990 c 3 § 705; 1989 c 252 § 4; prior: 1988 c 154 § 3; 1988 c 153 § 2; 1988 c 143 § 21; prior: 1987 c 456 § 2; 1987 c 402 § 1; prior: 1986 c 301 § 4; 1986 c 301 § 3; 1986 c 257 § 20; 1984 c 209 § 6; 1983 c 163 § 2; 1982 c 192 § 4; 1981 c 137 § 12. Formerly RCW 9.94A.120.]

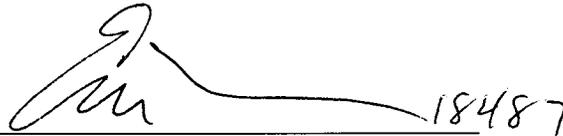
D. CONCLUSION

For the reasons stated herein, this Court should strike the no-contact-with-minors provision from Williams' sentence.

DATED this 18th day of December, 2009

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read 'CH' followed by a long horizontal line that ends in the number '18487'.

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Office ID No. 91051

Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 63094-6-1
)	
CALVIN WILLIAMS,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 18TH DAY OF DECEMBER, 2009, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] CALVIN WILLIAMS
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STATE OF WASHINGTON
COURT OF APPEALS
DIVISION I

SIGNED IN SEATTLE WASHINGTON, THIS 18TH DAY OF DECEMBER, 2009.

x *Patrick Mayovsky*